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Conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v. 02 Cr. 743 (DLC)

5 LOUIS VALLARIO, MICHAEL
6 DiLEONARDO, FRANK FAPPIANO,
and EDWARD GARAFOLA,

7 Defendants.

8 -----x

9

10 New York, N.Y.
11 June 20, 2002
2:20 p.m.

12

13 Before:

14 HON. DENISE L. COTE,

15 District Judge

16 APPEARANCES

17 JAMES B. COMEY
United States Attorney for the
18 Southern District of New York
BY: JOHN HILLEBRECHT
19 BY: MICHAEL McGOVERN
Assistant United States Attorneys

20

21 ARONE & DiPIETRO
Attorneys for Defendant Vallario
BY: ROGER L. STAVIS, of Counsel

22

23 ERIC FRANZ
Attorney for Defendant DiLeonardo

24 ALSO PRESENT: WILLIAM HEKEL, FBI
PAUL TAMBINO, FBI

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1 THE DEPUTY CLERK: On behalf of the government, are
2 you ready to proceed?

3 MR. HILLEBRECHT: We are ready. Good afternoon, your
4 Honor. John Hillebrecht and Michael McGovern for the United
5 States Attorney's office.

6 THE COURT: Good afternoon.

7 MR. HILLEBRECHT: Good afternoon, your Honor.

8 THE DEPUTY CLERK: Defendant Vallario, are you ready
9 to proceed?

10 MR. STAVIS: Yes, your Honor. Roger Stavis, and I'm
11 appearing for the counsel of Arone & DiPietro here this
12 afternoon before the Court and we are ready to proceed.

13 THE COURT: Good afternoon, Mr. Stavis.

14 THE DEPUTY CLERK: The defendant, Michael DiLeonardo,
15 are you ready to proceed?

16 MR. FRANZ: Yes, I am, your Honor. Eric Franz, 225
17 Broadway, Suite 512.

18 THE COURT: Good afternoon, Mr. Franz.

19 I will take a report from the government with respect
20 to the other two defendants.

21 MR. HILLEBRECHT: Your Honor, both of the other two
22 defendants are incarcerated in federal custody in other
23 facilities. We filed a writ ad prosequendam for them to be
24 writted into this district and that process is under way. At
25 the moment I don't have any update as to the expected arrival

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1 date.

2 THE COURT: Okay, good.

3 I will take a report from the government on the speedy
4 trial act issues.

5 MR. HILLEBRECHT: Your Honor, the indictment was
6 unsealed today and the defendants were taken into custody this
7 morning at 6:00 a.m. specifically, your Honor. Approximately.

8 THE COURT: Any post-arrest statements?

9 MR. HILLEBRECHT: No, your Honor.

10 THE COURT: Any search warrants?

11 MR. HILLEBRECHT: No, your Honor.

12 THE COURT: Any T-3s?

13 MR. HILLEBRECHT: Yes, your Honor. I can detail those
14 now or later.

15 THE COURT: No, that's fine.

16 MR. HILLEBRECHT: Okay.

17 THE COURT: If this case went to trial, how long would
18 it take to try?

19 MR. HILLEBRECHT: Our present estimate is
20 approximately eight weeks, your Honor.

21 THE COURT: And in general terms, what would the
22 government's proof consist of?

23 MR. HILLEBRECHT: The government's proof would consist
24 of the Title III materials, consensual tape recordings,
25 extensive surveillance of still photographs and videotapes, and

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1 in large part of the testimony of multiple cooperating
2 witnesses, as well as testimony from victims and certain eye
3 witnesses to some of the murders charged.

4 THE COURT: And with respect to the government's proof
5 at trial and the indictment, how far back in time does the
6 government's proof at trial, do you expect it to go?

7 MR. HILLEBRECHT: The indictment alleged these
8 defendants' participation in the enterprise back to 1988.
9 Predicate act one of the indictment is a homicide that occurred
10 in September 1989, as a result the government's proof would go
11 back to the mid to late '80s and begin then.

12 THE COURT: How long has this case been under active
13 investigation in the Southern District?

14 MR. HILLEBRECHT: The answer to that is somewhat
15 complicated. In December 1999 there was an arrest somewhat
16 related to this.

17 THE COURT: 1999?

18 MR. HILLEBRECHT: 1999, flowing out of an
19 investigation that lasted two and a half years into various
20 members and associates of a different organized crime families,
21 the DeCavalcante crime family.

22 As a result of that investigation's prosecution, which
23 included individuals who were charged with the Weiss homicide,
24 the government developed multiple cooperating witnesses which
25 led to the active investigation of these particular

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1 individuals, which resulted in this indictment.

2 In addition, your Honor, in 1989 when Mr. Weiss, the
3 victim charged in Racketeering Act One was murdered, he was, at
4 that point in time, in a pending Southern District of New York
5 case in which the lead defendant was a defendant by the name of
6 Angelo Paccione.

7 I made inquiries, and as I understand matters and
8 having reviewed the file and spoken to the assistant United
9 States attorney involved in the investigation, there was an
10 active investigation within the United States Attorney's office
11 up until only early in 1990, at which point in time, for a
12 variety of reasons, there was no longer an active investigation
13 ongoing in the office. And, among other things, that
14 particular assistant United States attorney left the office on
15 maternity leave.

16 The investigation did not pick up again within our
17 office until the DeCavalcante investigation, which really got
18 underway in late 1997 or early 1998.

19 THE COURT: I am asking these questions because I was
20 in the U.S. Attorney's office for the Southern District of New
21 York between December of '91 and January of '94 and I will not
22 preside over any case that was active in the office during the
23 time that I was in the office, whether it was in the civil or
24 criminal division, whether or not I have personal knowledge of
25 the case.

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1 So, I will ask defense counsel and the government to
2 consult with each other and let me give you those dates again.
3 It's December '91 to January of '94.

4 MR. HILLEBRECHT: Your Honor, what I propose is that I
5 give a more precise delineation of our understanding of when
6 the U.S. Attorney's office ceased its active investigation,
7 both to the Court and to counsel.

8 THE COURT: Okay. I don't think this is implicated,
9 but I had an earlier stint in the U.S. Attorney's office from
10 '77 to spring of '85.

11 MR. HILLEBRECHT: I have no reason to think that that
12 time period is implicated at all, your Honor.

13 THE COURT: Okay. Tell me what the government's plan
14 is with respect to discovery.

15 MR. HILLEBRECHT: Your Honor, the plan is as follows,
16 and again, unfortunately it is a little more complicated than
17 it often is.

18 The discovery in this case really comes in in two
19 tiers, there is discovery directly related to this recent phase
20 of the investigation into these individuals which consists of
21 some consensual tape recording, some fairly recent Title III
22 intercepts, a lengthy bunch of intercepts involving the
23 DeCavalcante family as to which some of these defendants are
24 discussed in detail but are not intercepted, some surveillance
25 fairly recently and other things of that sort.

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1 That we are going to be producing on a rolling basis
2 very promptly.

3 In addition, as alleged in the indictment, these
4 defendants have been members and or associates of the Gambino
5 family for quite a long time and they have been targeted in
6 multiple investigations in various jurisdictions over the
7 years. We have been, for the last several weeks, in the
8 process of gathering for the various databases, information
9 about Title III interception as to those defenses and we will
10 be producing those as they become available to us.

11 At the moment, based on what we know, based on this
12 prosecution team, we have no intention to use virtually any of
13 that earlier wiretap investigation. We expect to use some of
14 it but very little of it, and we expect we will be in position
15 to tell defense counsel that as to specific individual wires we
16 are not going to use that in this particular case. The problem
17 is that process is going to take a long time to some extent.

18 What we are requesting from the from the Court is six
19 weeks time in which we expect to produce the majority of that
20 material that I indicated exists.

21 I guarantee the Court, unfortunately given some of my
22 recent experiences, that it is likely there may be older wire
23 taps, specifically from other jurisdictions, that we won't be
24 able to get it straightened out, or our hands on it in that
25 time frame.

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1 But my expectation is the more difficult it is to get
2 the much less likely it is that it will be relevant to this
3 case.

4 THE COURT: If I understand you correctly, you expect
5 to make the Rule 16 disclosures of evidence you would be
6 offering at trial within the next six weeks. There may be
7 additional disclosures beyond that?

8 MR. HILLEBRECHT: Yes, your Honor. And it may be that
9 some of those additional disclosures of a very limited nature
10 would determine what we will be offering at trial. But
11 everything we are able to get our hands on that we have any
12 intention of using we expect to be in a position to produce
13 within six weeks.

14 THE COURT: Okay, that's August 2 for the bulk of the
15 discovery production by the government.

16 Let's move to the arraignment and then we will deal
17 with some scheduling issues. I would ask the two defendants
18 and their counsel to stand.

19 Mr. Vallario, have you received a copy of the
20 indictment?

21 DEFENDANT VALLARIO: Yes, I did, your Honor.

22 THE COURT: Do you wish me to read it to you?

23 DEFENDANT VALLARIO: No, your Honor.

24 THE COURT: How do you plead; guilty or not guilty?

25 DEFENDANT VALLARIO: Not guilty, your Honor.

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1 THE COURT: Thank you. You may be seated.

2 Mr. DiLeonardo, have you received a copy of the
3 indictment?

4 DEFENDANT DiLEONARDO: Yes I have, your Honor.

5 THE COURT: Do you want me to read it to you?

6 DEFENDANT DiLEONARDO: No thank you. It is not
7 necessary.

8 THE COURT: How do you plead; guilty or not guilty?

9 DEFENDANT DiLEONARDO: Not guilty.

10 THE COURT: I want to advise both of the defendants of
11 certain rights that they have. You have the right to remain
12 silent. You are not required to make any statements. Anything
13 you do say can be used against you. Even if you have already
14 made statements to the authorities you need not make any
15 further statements.

16 Do you understand that, Mr. Vallario?

17 DEFENDANT VALLARIO: Yes, I do, your Honor.

18 THE COURT: Do you understand that, Mr. DiLeonardo?

19 DEFENDANT DiLEONARDO: Yes, I do.

20 THE COURT: You have the right to be represented by
21 counsel during this court proceeding and any future court
22 proceedings and any time you are questioned by authorities. If
23 you cannot afford an attorney, I will appoint an attorney to
24 represent you.

25 Do you understand that, Mr. Vallario?

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1 DEFENDANT VALLARIO: Yes, I do, your Honor.

2 THE COURT: Do you understand that, Mr. DiLeonardo?

3 DEFENDANT DiLEONARDO: Yes, I do, your Honor.

4 THE COURT: Let's talk about schedule. For a variety
5 of reasons I don't think it makes sense for us to set a trial
6 date today. One, I want to make sure that I'm going to be the
7 judge that keeps the case; and I think the government needs
8 more time to look at those issues and be able to make
9 representations to me. And I think it is the judge who is
10 going to preside over the trial who should set the date.

11 Secondly, I think it makes more sense to have all four
12 defendants with their attorneys present before we set a trial
13 date, but I think we can set, in a preliminary way, a motion
14 schedule. The only motions that readily appear possible to be
15 made are, again, some of the Title IIIs if the government is
16 going to offer that evidence.

17 I remind counsel, and I am sure you are conscious of
18 this, that there should be no discovery motions whatsoever
19 unless you have complied with the local Southern District rule
20 with respect to discovery motions in criminal cases.

21 You must have explored the discovery problem. Should
22 you perceive there are any with the government, first try to
23 resolve those problems informally. And only after you are
24 unable to do so may you make a motion. Those motions can be
25 brought at any time.

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1 But, if you are going to challenge the Title IIIs or
2 believe you have any other motion to suppress, I think we
3 should set a motion schedule for sometime in September. You
4 will have had the summer to look at the discovery materials and
5 I think that makes sense as a schedule for a motion practice.

6 Do you agree, Mr. Stavis?

7 MR. STAVIS: No, respectfully I do not, your Honor. I
8 understood that Mr. Hillebrecht was going to make the Title III
9 material available in August in six weeks, was that correct?
10 August 2nd was it?

11 MR. HILLEBRECHT: I'm going to make it available as I
12 get it in my possession on a rolling basis with representation
13 that the vast majority of everything will be produced by August
14 2nd.

15 MR. STAVIS: Depending upon the extent of the Title
16 III, Mr. Hillebrecht has not made a representation as to the
17 length that the wire tap was up. As your Honor is well aware,
18 we have not only reams of applications but line sheets and
19 other issues to take up before we could even be in a position
20 to make a motion under Title III.

21 So, most respectfully, your Honor, I thought that that
22 schedule really didn't give sufficient time to the defense to
23 be able to make motions.

24 THE COURT: Okay. Well, as I understood you,
25 Mr. Hillebrecht, tell me if I am wrong, there are Title IIIs

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1 that you are aware of and that were part of the investigation
2 that directly resulted in this indictment, and I take it you
3 are in a position to make available the affidavit supporting
4 those wire tap orders on an earlier rather than later basis?

5 MR. HILLEBRECHT: Your Honor, you understood
6 absolutely correct. Yes. I would anticipate, certainly as to
7 the one that this team directly participated in, we will be
8 making discovery early next week.

9 As to the other one, I have got to get it but it's in
10 our office in Southern District, so I anticipate maybe by the
11 end of next week.

12 THE COURT: So, we will have motions on September 20th
13 and opposition due October 11th.

14 I am going to assume there is no reply. If defense
15 counsel wish to make a reply you absolutely can, but let me
16 know immediately, otherwise I'm going to assume it is fully
17 submitted as of October 11th.

18 Any reply, if you wish to make one, would be due
19 October 18 but it's not necessary to submit a reply.

20 MR. STAVIS: Your Honor, did I understand
21 Mr. Hillebrecht as stating that it is the two Southern District
22 wire taps that he is disclosing and that the other, what he
23 referred to as the DeCavalcante wire taps would be disclosed
24 later?

25 MR. HILLEBRECHT: No. One of the two is the

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1 DeCavalcante wire taps, it was a Southern District of New York
2 wire tap.

3 MR. STAVIS: Thank you, your Honor.

4 THE COURT: Mr. Franz, I moved too fast here. Does
5 this schedule meet with your approval?

6 MR. FRANZ: Yes, subject to the way the disclosure
7 comes in and what we ultimately receive. I imagine if what we
8 ultimately receive might require more time to review we will
9 notify the Court and seek some kind of accommodation.

10 THE COURT: Thank you.

11 As soon as the other two defendants arrive in the
12 District I will hold another conference for all four defendants
13 and set a trial date, so I would ask the government to advise
14 me promptly when they have arrived.

15 I would also like to put a time frame around a
16 decision as to whether I should be in this case or out so that
17 we can get it transferred to a new judge promptly, if that is
18 the appropriate course of action here.

19 Will the government be able to review its files and
20 gather pertinent information with respect to this issue within
21 the next week?

22 MR. HILLEBRECHT: Yes, Judge.

23 THE COURT: So, even though I would like to resolve
24 this quickly, I want to make sure that the other two defendants
25 have an opportunity to participate in whatever is happening

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1 here, so why don't we hope that the government can make some
2 kind of factual representations a week from Friday. And
3 depending what it is and what we know about the arrival of the
4 other two defendants in the district I will try to set a
5 schedule that seems appropriate to those circumstances.

6 Depending on what the government's submission is I may
7 be -- as a factual matter to me -- I may be automatically
8 recusing myself. If there is going to be some dispute or
9 further inquiry I want to make sure that all defendants have an
10 opportunity to participate in it.

11 So, we will just take this one step at a time. I
12 think that brings us to the last two issues, bail and speedy
13 trial act issues, probably.

14 Is there an agreement with respect to bail for these
15 two defendants?

16 MR. HILLEBRECHT: There is not, your Honor. The
17 government is seeking detention on both grounds. It's my
18 understanding, having discussed it with defense counsel, that
19 neither party is prepared to go forward today.

20 THE COURT: Okay.

21 MR. FRANZ: That's correct, your Honor.

22 THE COURT: So currently they're in custody.

23 MR. HILLEBRECHT: That's correct, your Honor.

24 THE COURT: So there is a consent to a remand for
25 today with a reservation of a right to a hearing and bail

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1 application, is that what I understand?

2 MR. FRANZ: Yes, your Honor.

3 MR. STAVIS: That's correct, your Honor.

4 The issue of a detention hearing and the timing of a
5 detention hearing would perhaps be influenced by your Honor's
6 decision as to whether you will feel constrained to recuse
7 yourself from sitting on this case.

8 And I don't know if it is your Honor's ordinary
9 practice to handle detention hearings or to send them to the
10 magistrate. I don't know what your Honor's practice is.

11 THE COURT: I normally keep them myself when it is an
12 indicted case when the case has been wheeled out to me.

13 I am not available next Monday, Tuesday and Wednesday,
14 I'm at a judicial conference, so I would be scheduling, if you
15 wanted, a hearing for next Thursday.

16 If you want to put that off, that's fine, and make it
17 after other issues are resolved.

18 MR. STAVIS: We would ask the Court to schedule the
19 detention hearing for Thursday. At that point Mr. DiPietro,
20 who will be representing Mr. Vallario for all purposes, will be
21 here and in a position to make a decision as to whether to
22 further postpone the hearing. But I would like and would
23 appreciate it if the Court would schedule the hearing for
24 Thursday.

25 THE COURT: Okay. Let's do it at 9:00 on the 27th.

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1 And if the defendants decide to postpone, please let

2 Ms. Sanchez know as soon as that decision is made.

3 MR. STAVIS: We will do that, your Honor.

4 THE COURT: Thanks.

5 Mr. Franz, what is your client's desire here?

6 MR. FRANZ: My client's desire right now is to
7 postpone the hearing. The earliest date I'm available after
8 next Thursday would be July 2nd in the morning because I'm
9 going to be on trial starting next Thursday, Friday, Monday and
10 Tuesday, but Tuesday we would be recommencing in the afternoon.

11 I would like to schedule it for 10:00 a.m. on the 2nd.

12 THE COURT: I can do it on the 3rd. I have a trial on
13 the 1st and 2nd. I mean, I would have to fit you in at
14 lunchtime.

15 MR. FRANZ: I understand. On the 3rd at what time?

16 THE COURT: I have a lot of flexibility that day. I
17 could do it at 10:30 or I could do it in the afternoon.

18 MR. FRANZ: Why don't we say 10:30 for now.

19 THE COURT: Okay. I think it may be appropriate here
20 to exclude time until October 11th, given our schedule, which
21 is the date for the submission of the government's opposition
22 to motions. There are some automatic exclusionary periods that
23 might apply thereafter if there are motions.

24 Is there any objection to excluding time at this point
25 until October 11th?

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1 MR. STAVIS: No objection, your Honor.

2 MR. FRANZ: None here, your Honor.

3 THE COURT: I am going to exclude time from today
4 until October 11th pursuant to the speedy Trial Act, Title 18,
5 United States Code, Section 3161(h)(8)(A). I find that such an
6 exclusion to be in the interest of justice and to outweigh the
7 interests of the defendants and the public in a speedy trial,
8 to permit discovery to be made and evaluated, motion practice,
9 receipt of other two defendants in this district, which is an
10 automatic exclusion. Also, for some further information for
11 this Court about whether or not recusal is appropriate and to
12 permit the defendants an opportunity to begin to evaluate
13 whether or not a plea is appropriate or otherwise to begin
14 their preparation for trial.

15 for all of these reasons I find the exclusion is
16 justified.

17 Is there anything else we should do today?

18 MR. STAVIS: Your Honor, I have an issue or a concern.
19 My client has a heart condition and takes several prescription
20 medications including Lipitor and Blocadren. I don't know how
21 the marshal service handles that. I have his prescriptions
22 here in the courtroom and I would just ask that whatever needs
23 to be done to facilitate him having his medication, be done.

24 I don't know if I can hand it to the marshals or how
25 it works.

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1 THE COURT: I don't either. Why don't you consult
2 with the government or with the marshals for the district.
3 There are probably procedures that apply here.

4 MR. STAVIS: Okay, I am informed by the marshal that
5 they will take his prescriptions now. Thank you, your Honor.

6 THE COURT: Can you think of anything else we should
7 do?

8 MR. HILLEBRECHT: Two matters, your Honor. First I
9 misspoke, the writs ad prosequendam have not been filed, they
10 can't be until the indictment is unsealed which happened a few
11 hours ago. It will be done today.

12 Secondly, the information given to the Court as to the
13 Weiss investigation I will give to the parties and Court when I
14 have it. I won't even wait until next Friday. It may ease
15 things for the detention hearing.

16 THE COURT: Thank you. Thank you, all.

17 MR. STAVIS: Thank you, your Honor.

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